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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CHOONG-DAE KANG et al.,

Plaintiffs and Respondents,

v.

AGUINA,

Defendant and Appellant.

E065768, E066587, E067169

(Super.Ct.No. RIC10019528)

OPINION

APPEAL from the Superior Court of Riverside County. Phillip J. Argento, James T. Warren, John D. Molloy, Judges. • Affirmed in part; reversed in part with directions.

Aguina, in pro. per., for Defendant and Appellant.

Law Offices of John M. Siciliano and John M. Siciliano, for Plaintiffs and Respondents.

• Judge Argento is a retired judge from the Los Angeles Superior Court and Judge Warren is a retired judge from the Riverside Superior Court, both assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1. INTRODUCTION

In January 2014, following a September 2013 jury trial, a judgment for \$574,500, comprised of \$77,000 in contract damages and \$497,500 in fraud damages, was entered in favor of plaintiffs and respondents, Choong-Dae Kang (Kang), her two siblings, Myung-Ja Kang and Kwang-Sa Kang, and her father, Jae-Sung Kang (plaintiffs), on their complaint for breach of contract and fraud against defendant and appellant, Aguina, in Riverside County Superior Court case No. RIC10019528 (the civil action).

At the time of the trial and judgment, Aguina and Kang were husband and wife but were engaged in protracted marital dissolution proceedings in the family court in Riverside County Superior Court case No. SWD015783. They were disputing child and spousal support, attorney fees, and the character and division of their community estate, and Aguina was claiming the community estate had a net value of around \$8 million. In the family court on September 27, 2012, before the civil action was tried, Aguina and Kang orally stipulated through their counsel that (1) any judgment obtained in the civil action against Aguina would be “a community debt,” and that (2) five real properties in Murrieta were Aguina’s separate properties.

On April 2, 2014, the judge who presided over the trial in the civil action (Judge Argento) issued an order staying enforcement of the \$574,500 judgment against Aguina pending: (1) plaintiffs’ presentation of sufficient evidence that they had standing to sue for the breach of contract and fraud claims they prosecuted in the civil action on behalf of

Kang's deceased mother; and (2) the family court's issuance of a judgment determining and dividing Kang and Aguina's community estate.

In these consolidated appeals, Aguina challenges three postjudgment orders of the court in the civil action (by Judge Molloy): (1) the February 10, 2016, order determining plaintiffs had standing to sue, or that the standing issue was res judicata in the civil action and could not be collaterally attacked following the judgment (case No. E065768); (2) the July 12, 2016, order lifting the April 2, 2014, stay order (by Judge Argento) (case No. E066587); and (3) the October 19, 2016, order invalidating the family court's April 16, 2016, order (by Judge Warren) removing the abstract of judgment or judgment lien, recorded on March 10, 2014, against Aguina's five real properties in Murrieta, securing payment of the \$574,500 judgment (case No. E067169).

Aguina claims the court in the civil action exceeded its authority in issuing these orders because the orders interfered with the family court's priority of jurisdiction to determine and divide his and Kang's community estate. We agree. The family court had priority of jurisdiction to characterize and divide Aguina and Kang's community estate because proceedings on these issues were pending in the family court when the civil action was filed. Thus, the court in the civil action exceeded its authority, or the scope of its concurrent subject matter jurisdiction with the family court, in lifting the April 2, 2014, order staying enforcement of the judgment and in invalidating or prohibiting the enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien recorded against Aguina's five separate Murrieta real

properties. We reverse the July 12 and October 16, 2016, postjudgment orders, and remand the matter for further proceedings consistent with this opinion.

II. FACTS AND PROCEDURE

A. *Background/Family and Civil Court Proceedings Predating the Challenged Orders*

Aguina and Kang were married in 1999, and there are two children of the marriage. In September 2008, Aguina filed a petition to dissolve the marriage in *In re Marriage of Aguina and Kang*, Riverside County Superior Court case No. SWD015783.¹ (*Aguina I*, *supra*, E058806 [at p. 3].) Since the dissolution proceeding was filed, Aguina and Kang have been engaged in protracted litigation both in the family court and in this civil case. (*Ibid.*)

On March 23, 2015, the family court issued a ““status only”” judgment dissolving Aguina and Kang’s marriage effective February 6, 2015. (*Aguina II*, *supra*, E063571 [at p. 2].) The judgment did not adjudicate any other issues. (*Ibid.*) On February 6, 2015, Aguina and Kang appeared for trial in the family court. During a late 2014 trial readiness conference, Kang and Aguina agreed there were issues to try concerning child and spousal support, attorney fees, and the division of the community estate. (*Id.* [at pp. 4-5].) But at trial, Aguina was unrepresented by counsel and unprepared to proceed; Kang

¹ On our own motion, we take judicial notice of this court’s opinion in *In re Marriage of Aguina Aguina and Choong-Dae Kang* (Dec. 15, 2016, E063571) [nonpub. opn.] (*Aguina II*). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) This court’s opinion in an earlier appeal in the family court case, *In re Marriage of Aguina Aguina and Choong-Dae Kang* (*Aguina I*) (Dec. 10, 2014, E058806) [nonpub. opn.], is part of the record on appeal. Thus, Aguina’s request for judicial notice of our opinion in *Aguina I*, filed on June 8, 2017, in case No. E067169, is moot.

was represented by counsel but still refused to call any witnesses or present any evidence. Kang claimed there were no longer any community assets to divide, and only asked the family court to dissolve the marriage. (*Id.* [at pp. 4-6].) The court dissolved the marriage effective February 6, 2015, but left its prior orders in effect and did not enter judgment on any support, attorney fee, or community estate issues. (*Ibid.*)²

Several years earlier, in October 2010, the plaintiffs in this civil action (Kang, her two siblings, and father) filed a complaint against Aguina alleging breach of contract and fraud. Plaintiffs claimed Aguina owed them over \$1.135 million for loans that Kang's mother—who died in 2008 while a resident of Japan—made to Aguina in 2004 to enable him to invest in several developable parcels of land in LaCresta or Murrieta. (*Aguina I, supra*, E058806 [at pp. 3-4].) Plaintiffs alleged they were the heirs at law of Kang's mother under Japanese law, and thus had standing to sue for the claims of Kang's mother or her estate. When the civil action was filed, Kang's siblings and father were residents of Japan, and Aguina and Kang lived in Murrieta. (*Id.* [at p. 3].) Before the civil action was tried, Kang's father died. Kang testified at trial in the civil action that she was responsible for settling her mother's estate and representing her immediate family members in the civil trial.

² In *Aguina II*, Aguina appealed the status-only judgment claiming it was void, and this court rejected that claim and upheld the judgment. (*Aguina II, supra*, E063571 [at p. 2].)

In February 2011, the court in the civil action issued a prejudgment right to attach order and writs of attachment against five real properties held solely in Aguina's name, as security for plaintiffs' breach of contract claim against Aguina. Later that month, the court stayed the civil action for six months pending the resolution by the family court of whether the loans from Kang's mother were separate or community debts. The stay expired without a ruling by the family court on this question. (*Aguina I, supra*, E058806 [at pp. 5-6].)

In May 2011, Aguina moved the family court to order Kang to pay \$25,000 of his attorney fees incurred in the family court proceedings, or to order the amount paid from “any of the various items of community property or other disputed property” in the family court proceedings. In the motion, Aguina asked the family court to set aside at least one of the writs of attachment so he could sell at least one of the Murrieta properties and pay his attorney fees, and to consolidate the civil case with the family court case because he and Kang continued to dispute the community or separate property character of the loans from or debts owed to Kang's mother. Aguina claimed he had very little income and was insolvent, but Kang earned substantial income, had “complete control” over the parties' “joint businesses and assets,” and owned and controlled additional assets in the United States and Japan. Aguina claimed his five Murrieta real properties were worth \$1,425 to \$1,875 million, substantial portions of the loans from Kang's mother had been repaid, and Kang was hiding substantial assets. (*Aguina I, supra*, E058806 [at p. 6].)

On October 31, 2011, the family court ordered Kang and Aguina to list the five Murrieta properties for sale and to “cooperate in the removal of any writ of attachment(s) in order for the sale [of the properties] to be consummated.” (*Aguina I, supra*, E058806 [at p. 7].) This order directed that the proceeds from the first parcel to be sold were to be split evenly between Aguina and Kang, and the family court reserved jurisdiction to characterize the parcels and their proceeds as community or separate assets. (*Ibid.*) Then, during a September 27, 2012 family court hearing, Kang and Aguina stipulated that (1) the five Murrieta real properties were Aguina’s separate properties, and (2) any judgment plaintiffs obtained against Aguina in the civil action would be a “community debt.” On May 14, 2013, the family court issued an order discharging the writs of attachment against Aguina’s five Murrieta real properties. (*Aguina I, supra*, E058806 [at pp. 2, 7-8].)³ The record on the current appeals indicates that the Murrieta real properties have not been sold and that Aguina still holds title to them solely in his name.

³ In *Aguina I*, Kang appealed the family court’s order discharging the writs of attachment, claiming the family court lacked jurisdiction to discharge them. (*Aguina I, supra*, E058806 [at pp. 7-8].) In *Aguina I*, this court held that the family court had “priority jurisdiction” to discharge the writs (*Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1135), and that by issuing the writs, the civil court exceeded its authority and interfered with the family court’s exclusive jurisdiction concerning the characterization and division of Kang and Aguina’s community estate (*Aguina I, supra*, E058806 [at pp. 12-14], citing *Askew v. Askew* (1994) 22 Cal.App.4th 942, 961 [“After a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.”])).

In September 2013, the civil action against Aguina was tried to a jury, with Judge Argento presiding. On September 27, 2013, the jury returned a verdict for plaintiffs of \$574,500, comprised of \$77,000 in breach of contract damages and \$497,500 in damages for fraud. On January 29, 2014, the court in the civil case (Judge Argento) entered judgment on the \$574,500 jury verdict, and a notice of entry of the judgment was served and filed on March 18, 2014. Aguina did not appeal the judgment, and it is final.

On October 16, 2013, before the judgment in the civil action was entered,⁴ the court in the civil action (Judge Argento) issued an order to show cause (OSC) why the enforcement of the judgment should not be stayed on either or both of two grounds: (1) plaintiffs' presentation of sufficient evidence of their *standing to sue* on behalf of Kang's deceased mother or her estate, and (2) the family court's determination and division of Kang and Aguina's community assets and debts. Both sides briefed these issues, and submitted competing evidence concerning plaintiffs' standing and lack of standing.

On March 10, 2014, while the OSC was pending, plaintiffs recorded an abstract of judgment in Riverside County on the \$574,500 judgment, thus encumbering Aguina's five real properties in Murrieta with a judgment lien. (Code Civ. Proc., § 697.310, subd. (a).) On April 2, 2014, following a March 27 hearing on its OSC, the court in the civil action (Judge Argento) issued an order staying enforcement of the \$574,500 judgment on

⁴ The civil court's four-month delay in entering the judgment until January 29, 2014, was inadvertent; in his April 2, 2014, decision and ruling, Judge Argento wrote that he thought he had signed plaintiffs' proposed judgment shortly after the jury verdict was rendered on September 27, 2013.

each of the grounds underlying the OSC—the question of plaintiffs’ standing to sue and the pending family court proceedings.⁵

On the standing issue, the court ruled that plaintiffs did not adduce sufficient evidence of their standing to sue Aguina for breach of contract and fraud on behalf of Kang’s deceased mother, either at trial or in response to the OSC, because plaintiffs did not show that Kang’s mother, a Korean national, was a Japanese citizen at the time of her death. If she had been, the court ruled, her husband and children (plaintiffs) would have automatically succeeded to her claims against Aguina, under Japanese law, without the need for probate proceedings or a court order authorizing them to sue. Thus, the court stayed enforcement of the judgment on this ground pending plaintiffs’ presentation of “satisfactory evidence” of their standing, that is, that Kang’s mother was a Japanese citizen at the time of her death.

On the issue of the family court’s priority of jurisdiction, the court ruled that its judgment enforcement “processes” would be wrongfully used if the judgment could be enforced against any community property before the family court determined and divided the community estate. The court explained: “It would be wrong . . . for Plaintiff Kang to attach assets that are hers and Aguina’s as part of the community; she would be attaching

⁵ We grant Aguina’s unopposed request for judicial notice of the civil court’s April 2, 2014, notice of decision and findings (by Judge Argento). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

against her own interest in community property. That scenario is one reason why, before this Court authorizes enforcement processes, the Family Law Court should decide whether (i) only Aguina's separate property or (ii) the community property, or (iii) both are chargeable with debt in the form of the Judgment's contract damages [\$77,000], tort damages [\$497,500], either, or both[.]” (*In re Marriage of Bell* (1996) 49 Cal.App.4th 300, 309 [“\$150,000 payment to settle tort claim against wife for embezzlement chargeable against community estate where community benefited from the embezzled funds”]; Fam. Code, § 2625.)

The court further ruled that it “lack[ed] jurisdiction” to decide several issues within the jurisdiction of the family court, including (1) whether the September 27, 2012, “stipulation or purported stipulation reached between Kang and Aguina . . . was lawful”; (2) if so, whether Kang was collaterally estopped from asserting that the contract and tort damages in the civil case were not a community debt; and (3) regardless of the stipulation or purported stipulation, whether the community benefited from Aguina's breach of contract and fraud.

The court further ruled that its stay order did not apply “to any separate property of Aguina's that the parties have already stipulated to as his separate property *by signed stipulation* that is not being challenged in the Family Law Court,” and that its stay order

did not apply “to property already found to be Aguina’s separate property, if any,” by the family court. (Italics added.)⁶

In June 2015, the civil action was assigned to Judge Molloy. In July 2015, plaintiffs filed a second civil action against Aguina (Riverside County Superior Court case No. MCC1500292) for fraudulent conveyance based on Aguina’s November 2013 issuance of a \$500,000 deed of trust against his Murrieta real properties and his attempts to sell his remaining interest in the properties. Plaintiffs sought to impose a constructive trust on the properties to prevent Aguina from further encumbering or selling them. The fraudulent conveyance action was consolidated with the (first) civil action.

Shortly after they filed the fraudulent conveyance action, plaintiffs applied for a temporary restraining order and preliminary injunction in that action, prohibiting Aguina from transferring or selling his remaining interest in the Murrieta properties. Plaintiffs claimed the April 2, 2014, stay order was giving Aguina “a window of opportunity to fraudulently circumvent” paying the \$574,500 judgment, and Aguina “appear[ed] to be attempting to transfer his real properties before the family law court [could] issue a

⁶ This portion of the April 2, 2014, stay order is inconsistent with the portion indicating the family court had to determine whether the \$574,500 judgment, or any part of it, was chargeable solely against Aguina’s separate property or Kang and Aguina’s community property. Even so, the record in the current appeals does not show that Kang and Aguina have entered into any such *signed stipulation*, or, moreover, that the family court has to date determined that the \$574,500 judgment, or any part of it, is chargeable solely against Aguina’s separate property and not against any community property.

remaining judgment regarding community property and other matters.”⁷ The temporary restraining order was granted, and the hearing on the preliminary injunction application was held on October 27, 2015. Meanwhile, Aguina filed a motion to “reverse” the \$574,500 judgment or order it “unenforceable” based in part on plaintiffs’ lack of standing, and this motion was heard with the preliminary injunction application on October 27.

At the October 27, 2015, hearing, the court (Judge Molloy) denied plaintiffs’ application for the preliminary injunction, reasoning in part that the family court acquired jurisdiction to characterize and divide the community estate when the marital dissolution petition was filed, and on October 31, 2011, the family court ordered the Murrieta properties to be sold and the writs of attachment against them removed in order to allow the properties to be sold. The court also noted that the April 2, 2014, order staying enforcement of the judgment was issued so that the family court could determine whether the judgment, or any part of it, was a community debt chargeable against community property, or a separate debt chargeable against Aguina’s separate property.

⁷ This allegation was ironic, given that Kang had every opportunity to prove the extent, if any, of the community assets and debts at the February 6, 2015, trial in the family court. As observed in *Aguina II*, issues concerning permanent child and spousal support, attorney fees, and the determination and division of the community estate came on for trial in the family court on February 6, 2015, but both Aguina and Kang refused to call any witnesses or present any evidence on these issues. (*Aguina II, supra*, E063571 [at pp. 3-4].) The family court thus ordered that its prior orders would remain in effect and reserved jurisdiction to characterize and divide the community estate. (*Id.* [at p. 6].)

The court also ruled plaintiffs had not demonstrated a likelihood of prevailing on their fraudulent conveyance claim because they had never adduced sufficient evidence of their standing to sue on behalf of Kang's mother during the 19 months since the April 2, 2014, stay order was issued.⁸ At the conclusion of the October 27 hearing, the court set a further OSC to allow plaintiffs *another* opportunity to prove they had standing, and on that basis satisfy the *first part* of the April 2, 2014, stay order.

B. *The Challenged Postjudgment Orders*

1. The February 10, 2016, Order Determining Plaintiffs Had Standing (E065768)

On February 10, 2016, following a February 5 hearing, the civil court (Judge Molloy) discharged the first part or standing issue portion of the April 2, 2014, stay order on the ground the standing issue was res judicata and could not be collaterally attacked in postjudgment proceedings. The court expressly disagreed with Judge Argento's April 2, 2014, decision to stay enforcement of the judgment on the ground plaintiffs had adduced insufficient evidence of standing at trial, and in the posttrial proceedings on the OSC.

The court explained: "The notion that the trial did not dispose of [the standing] issue is contrary to any interpretation of what a trial is supposed to be. . . . [T]he only way to attack what happened at trial was by . . . a [motion for] judgment notwithstanding the

⁸ The court also noted that it "appear[ed]" Aguina's current attempts to sell the Murrieta properties was an attempt to comply with the family court's "valid" October 31, 2011, order, rather than an attempt to defraud plaintiffs. Counsel for Kang pointed out that Aguina's recent issuance of the \$500,000 deed of trust against the properties violated the family court's October 31, 2011, order, and Aguina should have given half of that borrowed amount, or \$250,000, to Kang.

verdict, a motion for a new trial, or appeal [based on] insufficiency of the evidence”⁹

Aguina then told the court that Kang testified at the September 2013 trial that her mother was a citizen of Japan—the element Judge Argento ruled was necessary to establish plaintiffs’ standing. Aguina claimed he had adduced posttrial evidence showing that Kang’s testimony “was a lie.” At that point, the court said it was “absolutely satisfied” that the standing issue was *res judicata*, and quoted from *Pico v. Cohn* (1891) 91 Cal. 129, 133, where it was held that a judgment could not be set aside based on fraudulent trial testimony, because fraudulent trial testimony is not “extrinsic or collateral to the questions examined and determined in the action.”¹⁰

The court also ruled that the April 2, 2014, stay order would remain in effect, but ordered further briefing on whether the plaintiffs other than Kang (Kang’s two siblings and her deceased father), who were not parties to the marital dissolution proceedings, should be stayed from enforcing the \$494,500 fraud portion of the \$574,000 judgment

⁹ Aguina moved for a judgment notwithstanding the verdict following the trial in the civil action, but in it he did not claim plaintiffs presented insufficient evidence of their standing to sue. In any event, this motion was denied and Aguina did not appeal the judgment.

¹⁰ In the quoted portion, the *Pico* court explained that, when a judgment may be set aside based on fraud, “[i]n all such instances the unsuccessful party is really prevented, by the fraudulent contrivance of his adversary, from having a trial; *but when he has a trial, he must be prepared to meet and expose perjury then and there*. He knows that a false claim or defense can be supported in no other way; that the very object of the trial is, if possible, to ascertain the truth from the conflict of the evidence, and that, necessarily, the truth or falsity of the testimony must be determined in deciding the issue. The trial is his opportunity for making the truth appear. If, unfortunately, he fails, being overborne by perjured testimony, and if he likewise fails to show the injustice that has been done him on motion for a new trial, and the judgment is affirmed on appeal, he is without remedy.” (*Pico v. Cohn, supra*, 91 Cal. at p. 134, italics added.)

against Aguina. The standing issue, however, was “satisfied” by the February 10, 2016, order, which ruled that plaintiffs had standing to sue because the issue was res judicata, and which discharged the OSC (and stay order) “as to the standing issue only.”

2. The July 12, 2016, Order Lifting the April 2, 2014, Stay Order (E066587)

At a March 4, 2016, hearing, the court in the civil case (Judge Molloy) ruled that the April 2, 2014, stay order would remain in effect for the entire judgment based on the family court’s priority of jurisdiction to determine whether all or any part of the judgment was a community debt (*In re Marriage of Bell, supra*, 49 Cal.App.4th at p. 309), and based on the civil court’s inability to apportion the judgment among Kang and the other plaintiffs. On May 12, 2016, the court ordered the parties to brief whether Aguina’s appeal from the court’s February 10, 2016, order (in case No. E065768) required all further proceedings in the consolidated civil actions to be stayed.

On July 12, 2016, following a June 23 hearing, the court in the civil case (Judge Molloy) lifted the April 2, 2014, stay order. The court explained: “The Court doesn’t feel that the enforcement of the judgment should be stayed pending the appeal. Notwithstanding . . . that Mr. Aguina has convinced the Court of Appeal[] that he can appeal the ruling as to standing.”

3. The October 19, 2016, Order *Invalidating* the Family Court’s August 29, 2016, Order Removing the Judgment Lien Against the Murrieta Real Properties (E067169)¹¹

On August 29, 2016, the family court (Judge Warren) issued an order removing the abstract of judgment or judgment lien, recorded on March 10, 2014, against Aguina’s five Murrieta real properties, so that Kang could use, encumber, and transfer those properties. (Fam. Code, §§ 2040, subd. (a)(2), 2010, subd. (e).) Then, on October 19, 2016, following an October 11 hearing, the court in the civil action (Judge Molloy) granted plaintiffs’ motion for injunctive relief and issued an order invalidating or prohibiting the enforcement of the family court’s August 29, 2016, order removing the abstract of judgment or judgment lien.

The court (Judge Molloy) reasoned that, in removing the abstract and judgment lien, the family court interfered with the court’s jurisdiction in the civil action to enforce the judgment. The court recognized that the family court had jurisdiction to characterize and divide the community estate, but noted that the civil action was brought by “multiple plaintiffs” other than Kang, who were not parties to the dissolution proceedings, and that Aguina could “[p]resumably . . . seek reimbursement from Kang [f]or payments made by

¹¹ Given our consolidation of Aguina’s appeals in case Nos. E065768, E066587, and E067169, and given that the remaining portions of his requests for judicial notice in these appeals are limited to court records filed in the civil action and family court case, we grant the remaining requests to the extent the court documents are not already part of the record in these appeals. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) All of these court records are relevant to these appeals in a broad sense, and we discern no prejudice to Kang by their admission. (Cf. *People v. Townsel* (2016) 63 Cal.4th 25, 42, fn. 2 [judicial notice of irrelevant documents cannot be taken].)

[Aguina] in satisfaction of the judgment should the family court determine that the judgment is a community debt.”

The court observed that the other plaintiffs would lose their security interest in the Murrieta properties by the removal of the judgment lien, and that they might be unable to collect the judgment if the judgment lien were removed. The court also noted that Aguina made “several motions” to remove the judgment lien, that all of those motions had been denied and not appealed, and that the court itself no longer had jurisdiction to remove the judgment lien. On November 17, 2016, the family court (Judge Warren) imposed a terminating sanction against Kang and struck her responsive pleading in the family court case, thus authorizing the family court to determine and divide Kang and Aguina’s community estate by default and without Kang’s participation. By this order, the family court expressed concern that “millions of dollars in financial community property assets, of which [Aguina] has a vested interest, have gone missing while under [Kang’s] care and control. For example, the parties owned several condominiums in Japan. [Kang] has testified on numerous occasions that those condominiums were lost due to legal action in Japan and were purchased by Astoria, Inc. in Hong Kong. It was not until [Kang’s] 2015 tax filings were received that [Kang’s] sole ownership of Astoria, Inc. was discovered.”

III. DISCUSSION

Aguina challenges the February 10, July 12, and October 19, 2016, orders (by Judge Molloy) in the civil action. Together, the February 10 and July 12 orders lifted the

April 2, 2014, order (by Judge Argento) staying enforcement of plaintiffs' \$574,500 judgment against Aguina, and the October 19 order invalidated the family court's August 19, 2016, order (by Judge Warren) removing the judgment lien against Aguina's five Murrieta real properties, imposed by the March 10, 2014, abstract of judgment. Aguina claims each of these orders must be reversed because they interfered with the family court's priority of jurisdiction to determine and divide Aguina and Kang's community estate, and the civil court (Judge Molloy) thus exceeded its jurisdiction or authority in issuing the orders. We agree.

A. *The Standing Issue*

We begin with the issue of plaintiffs' standing to sue Aguina in the civil action for breach of contract and fraud on behalf of Kang's deceased mother based on the mother's alleged loans to Aguina in 2004. By its February 10, 2016, order,¹² the court determined that the issue of plaintiffs' standing was adjudicated in favor of plaintiffs during the

¹² Notwithstanding this court's June 17, 2016, order in case No. E065768 that the February 10, 2016, order was appealable, it is now apparent that the order was not appealable, separate from the July 12, 2016, order lifting the April 2, 2014, order staying enforcement of the judgment. Not all postjudgment orders are appealable, despite the broad language of Code of Civil Procedure section 904.1, subdivision (a)(2) (allowing appeal "[f]rom an order made after a judgment . . ."), and even though it has generally been said that "[a]n order *regarding* enforcement of a judgment is immediately appealable" (*Housing Group v. United Nat. Ins. Co.* (2001) 90 Cal.App.4th 1106, 1110, fn. 3, *italics added*). Indeed, postjudgment orders that do not make a final determination of the rights or obligations of the parties, and that anticipate or are preparatory to later proceedings, are not immediately appealable. (*Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 213-216.) The February 10 order is not a separately appealable order. By itself, it did not lift the April 2, 2014, stay order and did not finally determine the parties' rights regarding the lifting of the stay. That determination was made by the July 12, 2016, order lifting the stay. Nonetheless, the February 10 order is reviewable on Aguina's consolidated appeal from the July 12 order.

September 2013 trial and could not be collaterally attacked. Aguina claims the February 10 order was in error because he adduced indisputable evidence during posttrial proceedings, conclusively showing that plaintiffs did not have standing because Kang's mother was not a Japanese citizen.

Assuming plaintiffs' standing turned solely on whether Kang's mother was a Japanese citizen at the time of her death in 2008, and assuming further that Aguina adduced indisputable or conclusive evidence that she was not a Japanese citizen, the court (Judge Molloy) correctly ruled that the issue of plaintiffs' standing was or should have been adjudicated during the September 2013 trial and could not be collaterally attacked. (See 8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 7, pp. 590-591 [nonjurisdictional error cannot be raised in collateral attack, and insufficiency of evidence is nonjurisdictional error]; *Pico v. Cohn*, *supra*, 91 Cal. at p. 134 [perjured testimony must be exposed as such during trial or motion for new trial].)

B. The Family Court's Priority of Jurisdiction

We next consider Aguina's claim that the court in the civil action, by its July 10 and October 19, 2016, orders, exceeded its jurisdiction in lifting the April 2, 2014, stay order and in prohibiting enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien from Aguina's Murrieta real properties.

Our state Constitution establishes one superior court comprised "of one or more judges" in each county. (Cal. Const., art. VI, § 4.) Because a superior court is but one

tribunal, its judges “hold but one and the same court” and the jurisdiction they exercise in any cause is that of the court and not the individual judge or department. (*Williams v. Superior Court* (1939) 14 Cal.2d 656, 662.) Under the doctrine of “priority of jurisdiction,” the first judge or department to assume and exercise jurisdiction in a cause or matter acquires *exclusive jurisdiction* in the matter until it is disposed of. (*Levine v. Smith, supra*, 145 Cal.App.4th at p. 1135; *Williams v. Superior Court, supra*, at p. 662; *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1450.)

The doctrine of priority of jurisdiction avoids “conflicting adjudications of the same subject-matter” by different departments of the same superior court (*Williams v. Superior Court, supra*, 14 Cal.2d at p. 662) or by superior courts of different counties (*Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 742; see also *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-776 [if invoked by appropriate pleading, the rule of “exclusive concurrent jurisdiction” requires stay of second action filed in different county pending disposition of first action]).

As explained in *Williams*: “[W]here a proceeding has been duly assigned for hearing and determination to one department of the superior court . . . and the proceeding so assigned has not been finally disposed of . . . it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so assigned. [Citation.] . . . If such were not the law, conflicting adjudications of the same subject-matter by different departments of the one court would bring about an anomalous situation and doubtless lead to much

confusion. [Citation.]” (*Williams v. Superior Court*, *supra*, 14 Cal.2d at p. 662.) We also observe that the “family court” is not a separate part of the superior court with special jurisdiction or separate subject matter jurisdiction; it is ““instead the superior court performing one of its general duties.”” (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2017) ¶ 3:3.10, p. 3-3; *In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

The priority of jurisdiction doctrine has been applied to invalidate superior court orders that *may* conflict or interfere with the family court’s priority of jurisdiction to characterize and divide a community estate. (*Askew v. Askew*, *supra*, 22 Cal.App.4th at pp. 961-962 [civil department of superior court had no authority to consider husband’s civil suit against wife for fraud based on wife’s “false statements of love and sexual desire” given wife’s previously-filed dissolution proceeding and family court’s exclusive jurisdiction to characterize and divide community estate]; *In re Marriage of Schenk* (1991) 228 Cal.App.3d 1474, 1482-1484 [civil law and motion department had no authority to order sale of family home to pay husband’s support arrearages when family court had retained jurisdiction to divide community interests in the home].)

The priority of jurisdiction doctrine has also been applied to restrain superior court orders in favor of the third party judgment creditor of one spouse, when the orders may interfere with the family court’s jurisdiction and authority to characterize and divide the spouse’s community estate with the nondebtor spouse. (*In re Marriage of Van Hook* (1983) 147 Cal.App.3d 970, 980-982 [third party judgment creditor of wife restrained

from executing on community bank account and stock shares where family court had yet to enter judgment dividing community estate]; *Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1449-1450, 1455-1456 [foreclosure action by husband's parents on community home stayed pending determination and division of community estate].)

Glade is particularly instructive. In *Glade*, the husband's parents, as trustees of their intervivos trust, held a note secured by a deed of trust against the husband and wife's home. After the wife petitioned to dissolve the marriage, the parents filed a foreclosure action and obtained summary judgment in that action against the husband and wife. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1445-1448.) Before the order granting the summary judgment was issued, the family court, on the wife's motion, joined the trust in the marital dissolution proceeding and stayed the foreclosure action. The wife argued that if the parents reconveyed the home to the husband following the foreclosure, the husband might obtain relief not otherwise available to him in the family court "upon division of the community estate." (*Id.* at pp. 1446-1448.)

The *Glade* court held that the family court had "priority of jurisdiction" and that the judge in the foreclosure action therefore "lacked jurisdiction to award summary judgment" to the parents for the home. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1450, 1457.) The summary judgment for the parents interfered with the family court's priority of jurisdiction to determine and divide the husband and wife's community estate. (*Id.* at p. 1455; *Askew v. Askew*, *supra*, 22 Cal.App.4th at p. 961 ["After a family law

court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.”].)

Here, the July 10 and October 19, 2016, orders interfered with the family court’s priority of jurisdiction to determine and divide Kang and Aguina’s community estate. In lifting the April 2, 2014, order staying enforcement of the judgment, and in purporting to invalidate the family court’s August 29, 2016, order removing the judgment lien from Aguina’s Murrieta real properties, the court in the civil action allowed plaintiffs to satisfy the judgment by levying on and selling the Murrieta real properties. This could have allowed Kang to recover relief from Aguina not otherwise available to her in the family court proceedings. (*Glade v. Glade*, *supra*, 38 Cal.App.4th at pp. 1446-1450.)

Indeed, in the family court on September 27, 2012, Kang and Aguina orally stipulated, through their counsel, that any judgment plaintiffs obtained in the pending civil action for fraud and breach of contract would be “a community debt.” This suggested that the community estate benefited from the loans from Kang’s mother *and also benefited* from Aguina’s fraud and breach of contract in connection with those loans, as plaintiffs were alleging in the civil action. (*In re Marriage of Bell*, *supra*, 49 Cal.App.4th at p. 309.) Whether the community estate in fact did benefit from Aguina’s breach of contract and fraud, and whether there were any community assets to divide, was an issue for the family court to decide. At the time of the most recent consolidated appeal in case No. E067169, the family court had yet to determine these questions.

IV. DISPOSITION

The February 10, 2016, order determining that the issue of plaintiffs' standing was adjudicated during the September 2013 trial is affirmed. The July 12, 2016, order lifting the April 2, 2014, order staying the enforcement of plaintiffs' \$574,500 judgment against Aguina in the civil action, and the October 19, 2016, order invalidating or prohibiting the enforcement of the family court's August 29, 2016, order removing the abstract of judgment or judgment lien against Aguina's five Murrieta real properties, are reversed. The matter is remanded to the superior court in case No. RIC10019528 for further proceedings consistent with this opinion.

Appellant is awarded his costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

RAMIREZ
P. J.

MILLER
J.